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but it should be made in good faith and with ordinary diligence, and with such care as is required by the circumstances of the particular case.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 300, 301, 345; Dec. Dig. § 151.* 2 Va.-W. Va. Enc. Dig. 262; 265.]

2. Banks and Banking (§§ 119, 138*)—Relation of Bank to Depositor—Obligations of Bank.—A bank is the debtor of the depositor and must keep careful and faithful accounts with the depositor, scrutinize checks, and exercise proper care and skill to prevent or discover fraud.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 289, 398-404; Dec. Dig. §§ 119, 138.* 2 Va.-W. Va. Enc. Dig. 262.]

3. Banks and Banking (§ 112*)—Fraud of Bank Employee.—An employee of a bank in the perpetration of a fraud on a depositor is not the agent of the bank.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 271, 272; Dec. Dig. § 112.* 2 Va.-W. Va. Enc. Dig. 289, et seq.; 1 Id. 274.]

4. Banks and Banking (§ 154*)—Misconduct of Employee—Liability of Bank to Depositor.—Whether a bank was liable to a depositor for loss resulting from the fraud of employees of the bank in making false entries against the account of the depositor, notwithstanding his failure for about three years to discover the fraud, held, under the evidence, for the jury.

[Ed. Note.—For other cases, see Banks and Banking, Dec. Dig. § 154.* 2 Va.-W. Va. Enc. Dig. 262; 289, et seq.]

Judgment reversed. All the judges concur.

THOMPSON v. NORFOLK & P. TRACTION CO.

June 10, 1909.

[64 S. E. 953.]

1. Carriers (§§ 320, 347*)—Injuries to Passengers—Street Cars—Time to Alight—Negligence—Question for Jury.—In an action for injuries to a street car passenger as she was attempting to alight, whether defendant's alleged premature starting of the car before plaintiff had time to alight, or plaintiff's alleged negligence in attempting to alight before the car stopped, was the proximate cause of the accident, held for the jury.

[Ed. Note.—For other cases, see Carriers, Dec. Dig. §§ 320, 347.* 12 Va.-W. Va. Enc. Dig. 851.]

2. New Trial (§ 72*)—Verdict—Vacation.—A verdict should not be

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

disturbed even by the trial court, unless plainly against the weight of the evidence.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 146-148; Dec. Dig. § 72.* 1 Va.-W. Va. Enc. Dig. 581, et seq.]

3. New Trial (§ 72*)—Verdict—Weight of Evidence.—Where, in an action for injuries to a street car passenger, the evidence was amply sufficient to sustain a finding either way that plaintiff alighted before the car stopped, or that the car started prematurely before plaintiff had time to alight, a verdict for plaintiff, accepting the latter alternative, should not have been set aside as against the weight of the evidence, under the rule that to warrant a new trial, where the evidence is conflicting, the evidence must be insufficient to warrant the finding.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 146-148; Dec. Dig. § 72.* 12 Va.-W. Va. Enc. Dig. 851.]

Judgment reversed. All the judges concur.

RIVERSIDE RESIDENCE CO., Inc., v. HUSTED.

June 10, 1909.

[64 S. E. 958.]

1. Cancellation of Instruments (§ 32*)—Contract of Sale—Nature of Remedy.—A court of law cannot rescind a contract for the sale of real estate.

[Ed. Note.—For other cases, see Cancellation of Instruments, Dec. Dig. § 32.* 13 Va.-W. Va. Enc. Dig. 546.]

2. Vendor and Purchaser (§ 342*)—Contract—Breach by Vendor—Vendee's Remedies.—On breach of a contract by a vendor, the vendee may abandon possession and set up the breach as a defense when sued for the purchase price, or, if he has paid a part or the whole of the purchase money, he may sue at law to recover it, having abandoned the premises or restored them to the vendor, or he may sue in equity for a rescission.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 1018, 1019; Dec. Dig. § 342.* 13 Va.-W. Va. Enc. Dig. 543, et seq.]

3. Vendor and Purchaser (§ 334*)—Breach by Vendor—Purchase Money—Recovery.—Plaintiff purchased certain lots for a residence on installments. Plaintiff had paid over a third of the price when she discovered that defendant had permitted a race track corporation to remove the soil from the greater part of the lots, and excavate them. Held that, possession never having been delivered, and defendant having placed itself in such a position that it could not deliver the

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